

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
ICON INTERNATIONAL, INC.

Plaintiff,

-v.-

ELEVATION HEALTH LLC

Defendant.  
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ORDER

22 Civ. 4304 (MKV) (GWG)

**GABRIEL W. GORENSTEIN, United States Magistrate Judge**

On October 12, 2023, Judge Vyskocil ordered the parties to appear for a post-discovery conference on February 1, 2024. See Order, filed Oct. 12, 2023 (Docket # 69). The district court's individual practices and the case management schedule in the case required the parties to file a joint status letter one week before the conference. See Civil Case Management Plan and Scheduling Order, filed Sept. 20, 2022 (Docket # 18), ¶ 16. No such letter was timely filed and on January 29, 2024, Judge Vyskocil issued an order requiring the parties (1) to file the joint status letter and (2) to show cause why they should not be sanctioned because of their failure to file the letter by the deadline. See Order to Show Cause, filed Jan. 29, 2024 (Docket # 94). Additionally, the district court stated that "by failing to file pre-motion submissions, the parties have waived the opportunity to file motions for summary judgment." Id.

On January 30, 2024, the parties filed the joint status letter. See Letter, filed Jan. 30, 2024 (Docket # 95). Along with providing the required information requested by the district court, the letter provided a reason for the parties' failure to meet the court-ordered deadline: namely, their assumption that a prior letter had satisfied their obligation. Separately, Elevation filed a letter in response to the district court's order to show cause. See Letter, filed Jan. 30, 2024 (Docket # 96) ("Elevation OSC Response"). The Icon Parties made no such filing.

Elevation's response to the order to show cause requested that it not be sanctioned for failing to meet the deadline and that the order denying it permission to file a motion for summary judgment be reconsidered. See Elevation OSC Response at 4. On February 12, 2024, the district court ordered that "Judge Gorenstein will resolve all outstanding sanctions issues, including: the requests for sanctions by Elevation Health LLC that remain pending before Judge Gorenstein [see ECF No. 91]; this Court's most recent Order To Show Cause [ECF No. 94]; and the request for reconsideration of this Court's ruling that the parties forfeited the opportunity to file motions for summary judgment [ECF No. 96]." Scheduling Order, filed Feb. 12, 2024 (Docket # 101).

We address Elevation's request for discovery sanctions in an Opinion and Order being issued today.

As to the issue of whether the parties should be sanctioned for failing to file the status letter, Elevation gives a plausible explanation of why the parties thought a prior letter satisfied their obligation. See Elevation OSC Response. Elevation's counsel further indicates that this was the first deadline he missed.<sup>1</sup> See id. at 2. Finally, Elevation notes that the status letter was filed the day after the Order to Show Cause issued. See id.; Letter, filed Jan. 30, 2024 (Docket # 95).

Having considered the factors relevant to the imposition of sanctions as described in the Opinion and Order issued today, we conclude that Elevation's lack of willfulness and the short period of noncompliance strongly weigh against imposing sanctions. Furthermore, a sanction is not needed to compel Elevation's compliance with future directives. As for the Icon Parties, the Opinion and Order has already considered and imposed significant sanctions for their conduct in this case. No further sanction is needed to ensure future compliance with Court orders.

Accordingly, the parties will not be sanctioned for failing to timely file the joint status letter. Elevation's request for reconsideration of the Order denying it permission to file a summary judgment motion is granted.. Elevation will be permitted to file such a motion.

Elevation's proposed motion for summary judgment is returnable before Judge Vyskocil, shall comply with her Individual Practices, and shall be filed on or before September 27, 2024. Any opposition shall be filed by October 18, 2024. Any reply shall be filed by October 25, 2024.<sup>2</sup> If all parties to the motion wish to consent to the undersigned disposing of the motion, they may use the form available at: [https://nysd.uscourts.gov/sites/default/files/practice\\_documents/gwgConsentToProceedBeforeUSMagistrateJudgeOverASpecificMotion.pdf](https://nysd.uscourts.gov/sites/default/files/practice_documents/gwgConsentToProceedBeforeUSMagistrateJudgeOverASpecificMotion.pdf). If the parties do not all agree, the motion will remain before Judge Vyskocil.

SO ORDERED.

Dated: September 6, 2024  
New York, New York

  
GABRIEL W. GORENSTEIN  
United States Magistrate Judge

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<sup>1</sup> Elevation missed a similar deadline related to filing materials before the district court but this failure was committed by Elevation's previous counsel. See Order to Show Cause, filed Sept. 20, 2022 (Docket # 19); see also Letter, filed Sept. 23, 2022 (Docket # 22).

<sup>2</sup> No party other than Elevation sought permission to file a summary judgment motion. See Docket # 68, 96. Accordingly, we set a schedule only for Elevation's proposed motion.